IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 10TH JANUARY 2007 / 20TH PAUSHA 1928

CRP.No. 357 of 2001()

AGAINST THE ORDER DATED 30/11/2000 IN IA. 4409 /2000 IN OS.279/1997 of MUNSIFF COURT, KOZHIKODE-II

.....

REVN. PETITIONER:

P.SULAIMAN, S/O AHAMMED,
PEYUNGATT HOUSE, PERUVAYAL AMSOM, KOZHIKODE

BY ADV. SMT.LEKHA SURESH

RESPONDENTS:

C.CHELLAMMA, W/O K.P.S. PILLAI,
SAPNA P.O. BEYPORE,
NEDUVATTOM AMSON DESOM,
KOZHIKODE TALUK

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 10/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.R.P.357/2001

ORDER ON CMP NO.725/2001

DISMISSED

SD/-
M.SASIDHARAN NAMBIAR, JUDGE

(TRUE COPY)

P.A TO JUDGE

M.SASIDHARAN NAMBIAR, J.

.....

C.R.P.No.357 OF 2001

.....

DATED THIS THE 10TH DAY OF JANUARY, 2007

ORDER

Petitioner is the defendant in O.S.279 of 1997. Respondent is the plaintiff. An exparte decree was passed. Petitioner filed two applications, I.A.Nos.4409 of 2000 and 4410 of 2000, an application under Section 5 of the Limitation Act to condone the delay and application under Order IX Rule 13 of Code of Civil Procedure to set aside the exparte decree. As per common order dated 13.11.2000, both the petitions were dismissed. This revision petition is filed challenging the order in I.A.4409 of 2000, the application to condone the delay. When, by common order, application filed under Order IX Rule 13 of the Code was dismissed, revision challenging the order in the application to condone the delay alone is not maintainable without filing an appeal challenging the dismissal of the application under Order IX Rule 13. Even if petitioner has not separately challenged the order dismissing an application under Section 5 of the Limitation Act, if an appeal was filed against the dismissal of an

application under Order IX Rule 13, petitioner could have challenged that order in the appeal. But when an appeal is available against the dismissal of an application under Order IX Rule 13, without filing an appeal and without challenging that order, this revision is not maintainable.

CRP is dismissed.

M.SASIDHARAN NAMBIAR, JUDGE

lgk/-